

Pietrovito



Comptroller General  
of the United States  
Washington, D.C. 20548

## Decision

**Matter of:** Elma Engineering  
**File:** B-240420  
**Date:** November 13, 1990

Karl W. Wiedle for the protester.  
Hiroshi Yamashita, United Magnet Technologies, an interested party.  
Eugene R. Desaulniers, Southeastern Universities Research Association, Inc., for the prime contractor.  
Don R. Sloan, Department of Energy, for the agency.  
Guy R. Pietrovito, Esq., and James A. Spangenberg, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

### DIGEST

1. Department of Energy prime contractor reasonably determined that the protester's low-priced, alternate proposal to produce coils for dipole magnets to be incorporated in an electron accelerator was technically unacceptable where the contractor found the alternate product may be less reliable and more risky and the protester did not provide sufficient documentation, even after discussions and a site visit, to demonstrate the acceptability of its alternate product.
2. Department of Energy prime contractor was not obligated to provide the protester with all specific information or data needed to establish the acceptability of its proposal of an alternate proprietary product; prime contractor satisfied its obligation to conduct meaningful discussions by repeated discussions requesting information to establish the acceptability of the alternate proprietary product.

### DECISION

Elma Engineering protests the award of a contract to United Magnet Technologies under request for proposals (RFP) No. SURA-90-R010, issued by Southeastern Universities Research Association, Inc. (SURA), under SURA's prime contract with the Department of Energy (DOE) to design and construct DOE's Continuous Electron Beam Accelerator Facility (CEBAF). The

000081/142697

RFP seeks the production of common arc dipole magnets to be incorporated into CEBAF's electron accelerator.1/

The protest is denied.

Initially, we note that DOE does not dispute that our Office has jurisdiction to review this protest under 4 C.F.R. § 21.3(m)(10) (1990), which provides for our review of awards of subcontracts by government prime contractors where the awards are made "by or for the government." See Babcox & Wilcox Co., B-235502, Sept. 18, 1989, 89-2 CPD ¶ 237. Since federal procurement statutes and regulations do not apply per se to a management contractor operating by and for the government (such a contractor must conduct procurements in accordance with its prime contract with the agency and its own agency-approved procedures), our review is limited to determining whether the procurement conforms to the "federal norm," i.e., the policy objectives in the federal statutes and regulations. Merrick Eng'g, Inc., B-238706.2, June 14, 1990, 90-1 CPD ¶ 564.

The RFP contemplated the award or awards of fixed-price - subcontracts for the supply of four types of common arc dipole magnets. Each common arc dipole magnet consists of two distinct parts: a coil and a core. The coil is made from hollow copper conductor that is formed by "blacksmith" methods and insulated in a specialized, light manufacturing setting. The magnet core is fabricated by large machine tools to tight tolerances in a heavy manufacturing setting. The coil is assembled into the core to form a complete magnet assembly.

Offerors were informed that they could offer to: (1) produce both the magnet cores and coils and perform the final magnet assembly, (2) produce only magnet cores and perform the final magnet assembly, or (3) produce only magnet coils, and that offers would be evaluated for the purpose of making multiple awards. The RFP provided that award or awards would be made to the technically acceptable offeror or offerors for the items or combination of items that result in the lowest price to SURA, considering the assumed administrative cost.2/ The

---

1/ An electron accelerator "generates" a beam (continuous stream) of electrons at high velocity. The common arc dipole magnets guide the electron beam through the arcs at each end of the accelerator.

2/ In considering multiple awards the RFP provided that SURA would assume that \$38,000 is the administrative cost to SURA for issuing and administering each subcontract. The RFP also provided that transportation costs and Buy American factors would be considered in evaluating offerors' prices.

RFP contained detailed design and performance specifications for the production and assembly of the magnets, and provided that offerors could, for coil fabrication, "propose alternate manufacturing and testing methods and procedures which result in savings without compromising quality or performance of the coils."

SURA received nine proposals, including that of Elma for the production of coils, and included all offerors in the initial competitive range. Written discussions were conducted with all offerors. Regarding Elma's proposal, SURA informed Elma that its proposal to produce magnet coils using an alternate, proprietary insulation design and manufacturing process was unacceptable because Elma did not demonstrate that its alternate approach was equal to that specified by the RFP.<sup>3/</sup>

SURA received revised proposals and determined that only five offerors, including Elma, should remain in the competitive range. Elma was determined to be marginally acceptable<sup>4/</sup> while the other four offerors were found to be technically acceptable. Specifically, SURA found that Elma's proposal to fabricate coils using its alternate, proprietary insulation scheme still lacked the details necessary to evaluate the acceptability of this approach.

SURA conducted further written discussions with the offerors and requested best and final offers (BAFO). Elma was informed that its "alternate insulation scheme was insufficient without greater details to prove it to be equal or better than that specified in SURA's statement of work." SURA requested that Elma provide data to allow for the technical evaluation of Elma's alternate approach and that Elma provide an offer to produce the coils in accordance the insulation scheme stated in the RFP specifications. SURA also conducted a site visit to Elma and orally discussed Elma's insulation scheme. Prior to the submission of BAFOs, SURA informed Elma that its proposed alternate insulation scheme would not be acceptable.

Elma provided further information in its BAFO to support its proprietary insulation scheme for the coils and also offered to produce the coils in accordance with the RFP specifications. SURA determined that Elma's low-priced, alternate

---

<sup>3/</sup> Because of the proprietary nature of Elma's insulation scheme, our discussion of the acceptability of Elma's alternate proposal is necessarily general.

<sup>4/</sup> The source selection plan defined marginally acceptable as "fails to meet standards; low probability of success; significant deficiencies, but correctable."

proposal was technically unacceptable. Specifically, SURA concluded that, for the application sought by the RFP, the proposed alternate insulation scheme would not provide the same high degree of long-term reliability as the insulation system specified by the solicitation, because "[a]s a total system it still [had] deficiencies in that it is discontinuous and fails to provide a full membrane around each of the conductors."

Elma's basic offer, in its BAFO, to produce the coils in accordance with the RFP specifications was determined to be marginally acceptable.<sup>5/</sup> SURA received the following BAFOs to produce the coils in accordance with the solicitation specifications:

<u>Offeror</u>	<u>Evaluated Price</u>
United Magnet	\$1,433,949
Elma	\$1,544,715
Offeror A	\$1,816,695

Award of a subcontract for the coils was made to United Magnet, as the lowest priced, technically acceptable offeror.<sup>6/</sup> This protest followed.

Elma protests that it is entitled to award because its alternate coil insulation scheme is superior to that specified in the RFP and Elma's proposed price for its alternate scheme is \$212,846 lower than United Magnet's offer.<sup>7/</sup> Elma argues that SURA acted unreasonably in rejecting its low, alternate proposal where Elma guaranteed the performance of its coils and offered to test its proprietary insulation scheme at three times the specified voltage to prove the superiority of Elma's coils.

The determination of the relative merits of proposals is primarily the responsibility of the contracting agency, which must bear the burden of any difficulties resulting from a

---

<sup>5/</sup> Elma's basic offer was found marginally acceptable because of deficiencies in Elma's manufacturing plan, quality control procedures, and key personnel. Although Elma contends that these deficiencies were not identified during discussions, the record shows otherwise. In any event, since Elma's basic offer was not the lowest-priced, technically acceptable offer, Elma would not be entitled to award.

<sup>6/</sup> SURA awarded a subcontract to Process Equipment Company for the production of the magnet cores and final magnet assembly.

<sup>7/</sup> Elma's price for its alternate proposal was \$1,221,103.

defective evaluation. Viking Instruments Corp., B-238183, Apr. 24, 1990, 90-1 CPD ¶ 414. In reviewing challenges to the evaluation of a technical proposal, we will not reevaluate the proposal and independently judge its merits, but instead will consider whether the evaluation was reasonable and consistent with procurement laws and regulations. Id.

We find from our review of the record that SURA acted reasonably in finding Elma's alternate proposal to be unacceptable. SURA was concerned that Elma's less expensive, proprietary insulation scheme would not provide the same reliability as the vacuum-pressure-impregnation process specified by the RFP. In this regard, SURA conducted discussions with, and received revised proposals from, Elma to obtain sufficient information and data from Elma to determine the acceptability of Elma's process. From the information provided, SURA concluded that Elma's insulation scheme could be subject to air entrapment between the layers of insulation that could compromise the coil's mechanical and electrical integrity.

Elma disagrees with SURA's technical assessment of its insulation scheme and argues that it not only guaranteed the performance and quality of the coils but offered to test its coils at three times the specified voltage. We do not think that SURA acted unreasonably in refusing to accept Elma's promises on their face; Elma's offers to warrant and test its alternate product do not overcome SURA's reasonable judgment that Elma's alternate product was too risky.<sup>8/</sup> See Unisys Corp., B-231704, Oct. 18, 1988, 88-2 CPD ¶ 360.

Elma argues that SURA did not specify what data Elma was required to supply to establish the acceptability of its alternate insulation scheme. While agencies generally must advise offerors in the competitive range of deficiencies in their proposals to afford them the opportunity to revise their proposals to fully satisfy the government's requirements, see Secure Servs. Technology, Inc., B-238059, Apr. 25, 1990, 90-1 CPD ¶ 421, this does not require agencies to identify for offerors the information or data needed to establish the acceptability of their proposals. Rather, the agency should impart sufficient information to the offeror to afford it a fair and reasonable opportunity in the context of the procurement to identify and correct deficiencies in its proposal. Egan, McAllister Assoc., Inc., B-231983, Oct. 28, 1988, 88-2 CPD ¶ 405. SURA satisfied this obligation by repeatedly informing Elma that it had not provided sufficient information in its proposal to establish the acceptability of

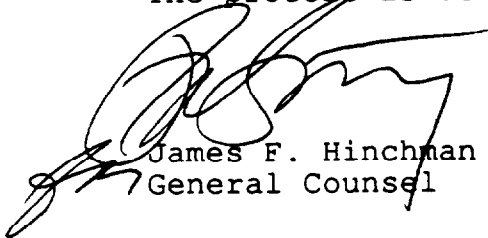
---

<sup>8/</sup> SURA asserts that the electron accelerator will not work if the common dipole magnets fail.

its proprietary insulation scheme and by providing Elma with the opportunity to revise its proposal. Where offerors propose alternate products, they must provide sufficient documentation to reasonably demonstrate their product will satisfy the government's requirements. See Rotair Indus., Inc., B-219994, Dec. 18, 1985, 85-2 CPD ¶ 683.

Elma also protests that SURA treated it unfairly by conducting site visits with several offerors, including United Magnet, during the discussions following the receipt of initial proposals, but not conducting a site visit with Elma until the discussions prior to the closing date for receipt of BAFOs. Elma argues that this indicates that SURA had "unofficially eliminated" Elma from the procurement after initial proposals. We do not agree. The record shows that Elma was not excluded from the competition; rather, as noted above, Elma received meaningful discussions and the opportunity to submit revised proposals to compete for award.

The protest is denied.



James F. Hinchman  
General Counsel